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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JULIO NOVA, 02A2345,

Plaintiff,

-v-

DECISION and ORDER  
14-CV-6235G(P)

SUPERINTENDENT KIRKPATRICK,  
LIEUTENANT KEENAN, SERGEANT WILL,  
C.O. MCKENZIE, C.O. DOMINO,  
C.O. MARTIN, C.O. BENSON,  
C.O. SHULTZ, C.O. BARRETT,  
C.O. MCCALL and C.O. COLLETT,

Defendants.

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Plaintiff has applied to the Court for appointment of counsel pursuant to 28 U.S.C. § 1915(e) (Docket No. 9). There is no constitutional right to appointed counsel in civil cases. However, under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. *See, e.g., Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc.*, 865 F.2d 22, 23 (2d Cir. 1988). Assignment of counsel in this matter is clearly within the judge's discretion. *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984). The factors to be considered in deciding whether or not to assign counsel include the following:

1. Whether the indigent's claims seem likely to be of substance;
2. Whether the indigent is able to investigate the crucial facts concerning his claim;
3. Whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder;
4. Whether the legal issues involved are complex; and
5. Whether there are any special reasons why appointment of counsel would be more likely to lead to a just determination.

*Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997); *see also Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986).

Plaintiff alleges that he was subjected to excessive force in retaliation for filing grievances. Court lacks sufficient information to evaluate the strength of plaintiff's case under the standards set forth above at this stage. Plaintiff's motion for appointment of counsel is denied without prejudice to it being renewed when the case is further developed. Nevertheless, in order to assist plaintiff in pursuing this case *pro se*, the Clerk of the Court is directed to send plaintiff the Court's booklet entitled Pro Se Litigation Guidelines.

SO ORDERED.

DATED:       Rochester, New York  
              October 29, 2014

*s/Marian W. Payson*

MARIAN W. PAYSON  
United States Magistrate Judge